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11

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 National Fair Housing Alliance, Inc., et al.,	)	CASE NO. C07-03255-SBA
	)	
15 Plaintiffs,	)	<b>REQUEST BY THE SPANOS</b>
	)	<b>DEFENDANTS FOR LEAVE TO</b>
16 vs.	)	<b>NOTICE A MOTION FOR</b>
	)	<b>RECONSIDERATION; PROPOSED</b>
17 A.G. Spanos Construction, Inc., et al.	)	<b>ORDER; PROPOSED POINTS AND</b>
	)	<b>AUTHORITIES</b>
18 Defendants.	)	
	)	[N.D. Cal. Local Rule 7-3]

19  
20 Hearing Date:

21 Time:

22 Dept:

23 Complaint Filed: June 20, 2007

24 **REQUEST**

25 Pursuant to Northern District Local Rule 7-9, the Spanos Defendants respectfully  
26 request leave to notice a motion to reconsider. By order issued on April 4, 2008, this court  
27 denied the Spanos defendants' entire motion to dismiss. Footnote 2 to this court's order states:

28 The Ninth Circuit recently addressed the question of when the  
FHA's two-year statute of limitations begins to run in *Garcia v.*

*Brockway*, 503 F.3d 1092, 1101 (9<sup>th</sup> Cir. 2007). However, the Ninth Circuit has agreed to rehear the case *en banc*, and therefore *Garcia* cannot provide any guidance to this Court. See 512 F.3d 1089 (“The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit”)

Order, p. 7, fn 2.

This court’s order also explained:

Plaintiffs have clearly alleged a “continuing violation” of the FHA by the Spanos Defendants, alleging that they “engaged in a continuous pattern and practice of discrimination against people with disabilities” since 1991 by “designing and/or constructing” apartment complexes that deny full access to and use of the facilities as required under the FHA, FAC, ¶ 4, and therefore none of the claims of the FAC against the Spanos Defendants are barred by the statute of limitations.

Order, p. 9:15-20.

On May 13, 2008, the Ninth Circuit (en banc) issued its opinion in *Garcia v. Brockway* \_\_\_ F.3d \_\_\_, 2008 U.S. App. LEXIS 10258 (9<sup>th</sup> Cir. 2008). The opinion explains that the continuing violation doctrine is inapplicable to “design and construct” discrimination claims brought under 42 U.S.C. section 3604(f)(3)(c). See *id.*, 2008 U.S.App. LEXIS 10258 at pp. \*12-\*14; and see Proposed Memorandum of Points and Authorities filed concurrently herewith.

### CONCLUSION

The above change in the law presents good cause for this court to issue an order allowing the Spanos Defendants to notice a motion for reconsideration.

Dated: June 2, 2008

FREEMAN, D’AIUTO, PIERCE, GUREV,  
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By 

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